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SERVICE DATE - LATE RELEASE SEPTEMBER 24, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 638

PROCEDURES TO EXPEDITE RESOLUTION  
OF RAIL RATE CHALLENGES TO BE CONSIDERED  
UNDER THE STAND-ALONE COST METHODOLOGY

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board is amending its regulations regarding discovery procedures to correct an inadvertent omission.

EFFECTIVE DATE: These rules are effective on September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jamie Rennert, (202) 565-1566. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638 (STB served Apr. 3, 2003, and published Apr. 9, 2003 (68 FR 17312)), the Board revised the procedures at 49 CFR 1114.31 dealing with discovery disputes in rail rate challenge cases considered under the stand-alone cost methodology. As relevant here, the Board added four numbered paragraphs (a)(1)-(4) to subsection 1114.31(a) to expedite the discovery process. However, in the course of formatting these amendments for publication in the Federal Register, the Board inadvertently omitted then-existing subsection 1114.31(a), which was to be retained as the introductory paragraph to new paragraphs (a)(1)-(4). As a result, section 1114.31(a) is being revised to reincorporate the omitted paragraph. To comply with Federal Register form, we are also changing "section 1104.13" to "49 CFR 1104.13" in paragraph (a)(1), and changing "subparagraph (a)(3)" to "paragraph (a)(3)" in paragraph (a)(4).

Because this rule change simply corrects a technical error that occurred during the prior rule change and makes other technical changes to conform with Federal Register form, it will be issued as a final rule without requesting public comment. See 5 U.S.C. 553(b)(A). Moreover, there is good cause

to make this rule effective on less than 30 days' notice in order to correct the regulation as soon as possible. See 5 U.S.C. 553(d).

The Board certifies that the rule will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1114

Administrative practice and procedure.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams  
Secretary

## APPENDIX

For the reasons set forth in the preamble, Part 1114 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

### **PART 1114 — EVIDENCE; DISCOVERY**

1. The authority citation for Part 1114 continues to read as follows:

**Authority: 5 U.S.C. 559; 49 U.S.C. 721.**

#### **§1114.31 [Amended]**

2. Revise section 1114.31(a) to read as follows:

#### **§1114.31 Failure to respond to discovery.**

(a) Failure to answer. If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under §1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to §1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(1) Reply to motion to compel generally. Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) Reply to motion to compel in stand-alone cost rate cases. A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) Conference with parties on motion to compel. Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology,

Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) Ruling on motion to compel in stand-alone cost rate cases. Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel. Appeals of a Secretary's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

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